

MEMORANDUM OF LAW

DATE: January 5, 1993

TO: Arthur Duncan, Management Assistant

FROM: City Attorney

SUBJECT: Liability Waivers for Ride-Along with Members of
the Citizens' Review Board on Police Practices

Recently, Board members have expressed concern about signing waivers indicating they are participating in ride-alongs on a voluntary basis. The by-laws of the Board specify that each member shall participate in at least one ride-along each month. As a result of this rule, Board members have requested that new waiver language be drafted specifically addressing their needs.

In reviewing the Board's request, I have determined Board members should not be required to sign waivers. They should instead be covered by Workers' Compensation. As a rule, volunteers are not covered by Workers' Compensation. California Labor Code section 3352 excludes from Workers' Compensation coverage "any person performing voluntary service for a public agency or a private, nonprofit organization who receives no remuneration for the services other than meals, transportation, lodging, or reimbursement for incidental expenses." Additionally, California Labor Code section 3363.5 provides that volunteers for a public entity may be covered by Workers' Compensation if certain conditions are met. A copy of a Memorandum of Law written by Deputy City Attorney Mary Kay Jackson, addressing those conditions is attached for your review. However, municipalities may augment Workers' Compensation rules without running afoul of statewide preemption on the subject so long as the municipalities rules are designed to augment rather than contradict or constrict the statewide regulation.

The City of San Diego has chosen to augment existing Workers' Compensation benefits by including unpaid, voluntary board and commission members in the unclassified service. Specifically, San Diego City Charter ("Charter") section 117 provides in pertinent part: "Employment in the City shall be divided into the Unclassified and Classified Service. (a) The Unclassified Service shall include: . . . Members of all boards

and commissions." As members of the unclassified service, Board members are uncompensated employees pursuant to Charter section 43 and need not waive any legal rights regarding claims against the City as a result of injuries incurred while they are performing their Board duties. Rather, as members of the unclassified service, Board members are entitled to Workers' Compensation for any such injuries. Workers' Compensation benefits are widely recognized by the courts as the exclusive remedy for work related injuries, therefore, no liability waivers are required.

If you have additional questions, please contact me.

JOHN W. WITT, City Attorney

By

Sharon A. Marshall

Deputy City Attorney

SAM:mrh:341.1(x043.2)

Attachment

cc Pat Brogan

Jim Chapin

Tom Calverley

Dave Worden

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